

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 HOUSE AMENDMENTS AMENDED, RETURNED TO HOUSE

5 January 25, 2006

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7 **S. 384**

8

9 Introduced by Senators Lourie, Thomas, Reese, Bryant, Knotts,
10 Sheheen, Hutto, McGill, Jackson, Ford, Scott, Malloy, Land,
11 Gregory, Drummond, Pinckney, Cromer, Short, Matthews,
12 Campsen, Anderson and Hawkins

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14 S. Printed 1/25/06--S. [SEC 1/26/06 3:19 PM]

15 Read the first time February 1, 2005.

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9 **A BILL**

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11 TO AMEND SECTION 16-17-500, AS AMENDED, CODE OF
12 LAWS OF SOUTH CAROLINA, 1976, RELATING TO
13 SUPPLYING MINORS WITH TOBACCO OR CIGARETTES,
14 SO AS TO PROVIDE THAT THIS PROVISION APPLIES TO
15 THE SALE, FURNISHING, GIVING, DISTRIBUTION, AND
16 PROVISION TO A MINOR OF CIGARETTES, TOBACCO,
17 CIGARETTE PAPER, OR A TOBACCO PRODUCT; TO
18 PROVIDE THAT CERTAIN INDIVIDUALS LESS THAN
19 EIGHTEEN YEARS OF AGE MAY NOT PURCHASE,
20 ACCEPT RECEIPT OF, POSSESS, ATTEMPT TO PURCHASE,
21 ATTEMPT TO ACCEPT RECEIPT OF, OR ATTEMPT TO
22 POSSESS A TOBACCO PRODUCT OR TO OFFER
23 FRAUDULENT PROOF OF AGE FOR THE PURPOSE OF
24 PURCHASING OR POSSESSING A TOBACCO PRODUCT; TO
25 REVISE THE DISBURSEMENT OF FINES COLLECTED, SO
26 AS TO DISTRIBUTE ONE-HALF OF THESE FINES TO THE
27 DEPARTMENT OF HEALTH AND ENVIRONMENTAL
28 CONTROL FOR ITS YOUTH SMOKING PREVENTION
29 PLAN; TO AUTHORIZE COMMUNITY SERVICE IN LIEU OF
30 FINING A MINOR; AND TO REVISE THE PENALTIES FOR
31 VIOLATIONS OF THIS SECTION.

32 Amend Title To Conform

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34 Be it enacted by the General Assembly of the State of South
35 Carolina:

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37 SECTION 1. This act may be cited as the "Youth Access to
38 Tobacco Prevention Act of 2006".

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40 SECTION 2. Section 16-17-500 of the 1976 Code is amended to
41 read:

1 “Section 16-17-500. (A) It shall be is unlawful for any person
2 an individual to sell, furnish, give, distribute, purchase for, or
3 provide any a tobacco product to a minor under the age of eighteen
4 years with cigarettes, tobacco, cigarette paper, or any substitute
5 therefor. Any person violating the provisions of this section, either
6 in person, by agent or in any other way, shall be guilty of a
7 misdemeanor and, upon indictment and conviction, therefor shall
8 be punished as follows:

9 (1) for a first offense by a fine not exceeding twenty five
10 dollars;

11 (2) for a second offense, by a fine not exceeding fifty
12 dollars; and

13 (3) for a third or subsequent offense, by a fine of not less
14 than one hundred dollars or imprisonment for not more than one
15 year nor less than sixty days, or both.

16 One half of any fine imposed shall be paid to the informer of the
17 offense and the other half to the treasurer of the county in which
18 such conviction shall be had.

19 (B) It is unlawful to sell a tobacco product to an individual who
20 does not present upon demand proper proof of age. Failure to
21 demand identification to verify an individual's age is not a defense
22 to an action initiated pursuant to this subsection. Proof that is
23 demanded, is shown, and reasonably is relied upon for the
24 individual's proof of age is a defense to an action initiated pursuant
25 to this subsection.

26 (C) It is unlawful to sell a tobacco product through a vending
27 machine unless the vending machine is located in an
28 establishment:

29 (1) which is open only to individuals who are eighteen years
30 of age or older; or

31 (2) where the vending machine is under continuous control
32 by the owner or licensee of the premises, or an employee of the
33 owner or licensee, can be operated only upon activation by the
34 owner, licensee, or employee before each purchase, and is not
35 accessible to the public when the establishment is closed.

36 (D)(1) An individual who knowingly violates a provision of
37 subsections (A), (B), or (C) in person, by agent, or in any other
38 way is guilty of a misdemeanor and, upon conviction, must be:

39 (a) for a first offense, fined not less than one hundred
40 dollars nor more than two hundred dollars;

41 (b) for a second offense, which occurs within three years
42 of the first offense, fined not less than two hundred dollars nor
43 more than three hundred dollars;

1 (c) for a third or subsequent offense, which occurs within
2 three years of the first offense, fined not less than three hundred
3 dollars nor more than four hundred dollars.

4 (2) In lieu of the fine, the court may require an individual to
5 successfully complete a Department of Alcohol and Other Drug
6 Abuse Services approved merchant tobacco enforcement education
7 program.

8 (E)(1) A minor under the age of eighteen years must not
9 purchase, attempt to purchase, possess, or attempt to possess a
10 tobacco product, or present or offer proof of age that is false or
11 fraudulent for the purpose of purchasing or possessing a tobacco
12 product.

13 (2) A minor who knowingly violates a provision of
14 subsection (E)(1) in person, by agent, or in any other way commits
15 a non-criminal offense and is subject to a civil fine of twenty-five
16 dollars. The civil fine is subject to all applicable court costs,
17 assessments, and surcharges.

18 (3) In lieu of the civil fine, the court may require a minor to
19 successfully complete a Department of Health and Environmental
20 Control approved smoking cessation or tobacco prevention
21 program, or to perform not more than five hours of community
22 service for a charitable institution.

23 (4) If a minor fails to pay the civil fine, successfully
24 complete a smoking cessation or tobacco prevention program, or
25 perform the required hours of community service as ordered by the
26 court, the court may restrict the minor's driving privileges to
27 driving only to and from school, work, and church, or as the court
28 considers appropriate for a period of ninety days beginning from
29 the date provided by the court. If the minor does not have a
30 driver's license or permit, the court may delay the issuance of the
31 minor's driver's license or permit for a period of ninety days
32 beginning from the date the minor applies for a driver's license or
33 permit. Upon restricting or delaying the issuance of the minor's
34 drivers license or permit, the court must complete and remit to the
35 Department of Motor Vehicles any required forms or
36 documentation. The minor is not required to submit his driver's
37 license or permit to the court or the Department of Motor Vehicles.
38 The Department of Motor Vehicles must clearly indicate on the
39 minor's driving record that the restriction or delayed issuance of
40 the minor's driver's license or permit is not a traffic violation or a
41 driver's license suspension. The Department of Motor Vehicles
42 must notify the minor's parent, guardian, or custodian of the
43 restriction or delayed issuance of the minor's driver's license or

1 permit. At the completion of the ninety-day period, the
2 Department of Motor Vehicles must remove the restriction or
3 allow for the issuance of the minor's license or permit. No record
4 may be maintained by the Department of Motor Vehicles of the
5 restriction or delayed issuance of the minor's driver's license or
6 permit after the ninety-day period. The restriction or delayed
7 issuance of the minor's driver's license or permit must not be
8 considered by any insurance company for automobile insurance
9 purposes or result in any automobile insurance penalty, including
10 any penalty under the Merit Rating Plan promulgated by the
11 Department of Insurance.

12 (5) A violation of this subsection is not a criminal or
13 delinquent offense and no criminal or delinquent record may be
14 maintained. A minor may not be detained, taken into custody,
15 arrested, placed in jail or in any other secure facility, committed to
16 the custody of the Department of Juvenile Justice, or found to be in
17 contempt of court for a violation of this subsection or for the
18 failure to pay a fine, successfully complete a smoking cessation or
19 tobacco prevention program, or perform community service.

20 (6) A violation of this subsection is not grounds for denying,
21 suspending, or revoking an individual's participation in a state
22 college or university financial assistance program including, but
23 not limited to, a Life Scholarship, a Palmetto Fellows Scholarship,
24 or a need-based grant.

25 (7) The uniform traffic ticket, established pursuant to
26 Section 56-7-10, may be used by law enforcement officers for a
27 violation of this subsection. A law enforcement officer issuing a
28 uniform traffic ticket pursuant to this subsection must immediately
29 seize the tobacco product. The law enforcement officer also must
30 notify a minor's parent, guardian, or custodian of the minor's
31 offense, if reasonable, within ten days of the issuance of the
32 uniform traffic ticket.

33 (F) This section does not apply to the possession of a tobacco
34 product by a minor working within the course and scope of his
35 duties as an employee or participating within the course and scope
36 of an authorized inspection or compliance check.

37 (G) Jurisdiction to hear a violation of this section is vested
38 exclusively in the municipal court and the magistrate's court. A
39 hearing pursuant to subsection (E) must be placed on the court's
40 appropriate docket for traffic violations, and not on the court's
41 docket for civil matters.

1 (H) A retail establishment that distributes tobacco products
2 must train all retail sales employees regarding the unlawful
3 distribution of tobacco products to minors.

4 (I) Notwithstanding any other provision of law, a violation of
5 this section does not violate the terms and conditions of an
6 establishment's beer and wine permit and is not grounds for
7 revocation or suspension of a beer and wine permit.”

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9 SECTION 3. Section 16-17-501(2) of the 1976 Code is amended
10 to read:

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12 “(2) ‘Proof of age’ means a driver’s license or ~~other~~
13 ~~documentary or written evidence that the individual is eighteen~~
14 ~~years of age or older identification card issued by this State or a~~
15 United States Armed Services identification card.”

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17 SECTION 4. The repeal or amendment by this act of any law,
18 whether temporary or permanent or civil or criminal, does not
19 affect pending actions, rights, duties, or liabilities founded thereon,
20 or alter, discharge, release or extinguish any penalty, forfeiture, or
21 liability incurred under the repealed or amended law, unless the
22 repealed or amended provision shall so expressly provide. After
23 the effective date of this act, all laws repealed or amended by this
24 act must be taken and treated as remaining in full force and effect
25 for the purpose of sustaining any pending or vested right, civil
26 action, special proceeding, criminal prosecution, or appeal existing
27 as of the effective date of this act, and for the enforcement of
28 rights, duties, penalties, forfeitures, and liabilities as they stood
29 under the repealed or amended laws.

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31 SECTION 5. If any section, subsection, item, subitem, paragraph,
32 subparagraph, sentence, clause, phrase, or word of this act is for
33 any reason held to be unconstitutional or invalid, such holding
34 shall not affect the constitutionality or validity of the remaining
35 portions of this act, the General Assembly hereby declaring that it
36 would have passed this act, and each and every section, subsection,
37 item, subitem, paragraph, subparagraph, sentence, clause, phrase,
38 and word thereof, irrespective of the fact that any one or more
39 other sections, subsections, items, subitems, paragraphs,
40 subparagraphs, sentences, clauses, phrases, or words hereof may
41 be declared to be unconstitutional, invalid, or otherwise
42 ineffective.

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1 SECTION 6. This act takes effect six months after the date of
2 approval by the Governor.

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